



## Exempt Action Final Regulation Agency Background Document

<b>Approving authority name</b>	Virginia Waste Management Board
<b>Primary action</b>	9VAC20-90
<b>Secondary action(s)</b>	None
<b>Regulation title</b>	Solid Waste Management Permit Action Fees and Annual Fees
<b>Action title</b>	Permit Fees (Rev. A10w)
<b>Date this document prepared</b>	June 27, 2010

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 A of the Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99)

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

This final exempt regulatory action is being taken to implement provisions of budget item 354 of House Bill 30 (HB 30), as enacted by 2010 General Assembly. This action increases the amount of nonhazardous solid waste annual fees assessed and makes a change in the method of determining those annual fees in order to recover \$1,250,000 of revenue removed from general fund appropriations during the 2010 General Assembly. This action ensures that annual fees continue to cover a portion of the direct costs for processing, compliance and enforcement of permits issued for the disposal, treatment or storage of nonhazardous solid waste. As required by HB 30, this action also provides for a cap on the total amount of fees collected.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency, including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

On June 14, 2010, the Virginia Waste Management Board took final action to adopt amendments to the regulation entitled "Solid Waste Management Permit Action Fees and Annual Fees," specifically, 9VAC20-90-65, 9VAC20-90-114, 9VAC20-90-115 and 9VAC20-90-130. The regulatory action is to be effective on July 1, 2010 or as soon thereafter as possible, consistent with the Administrative Process Act.

This regulation amendment is specifically exempted from the state administrative procedures for adoption of regulations contained in Article 2, Chapter 40, Title 2.2 of the Code of Virginia (the Administrative Process Act) by the provisions of budget item 354 of HB 30, as enacted by the 2010 General Assembly, and the amendment is therefore necessary to conform to Virginia budgetary law.

**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
90-65.	N/A.	Payment of annual fees.	N/A.
A.	A 1.	Requires that annual fees be paid for each applicable activity.	Adds requirement that is removed from subsection B that fees be calculated in accordance with 9VAC20-90-115. Also adds a requirement that fees be calculated in accordance with new section 9VAC20-90-114. Necessary to reorganize and clarify new annual fee requirements.
A.	A 2.	Requires that facilities with multiple activities pay fees for each activity from the fee table in 9VAC20-90-130.	Renumbered and removed the reference to the fee table to the calculation in 9VAC20-90-115. Necessary to reorganize and clarify annual fee requirements.
A.	A 3.	Refers to statutory language for how fee amounts are determined.	Renumbered. Necessary to reorganize and clarify annual fee requirements.
B 1.	N/A.	Provides information on when annual fees are to be submitted.	Removed all language relating to the determination of annual fee amounts to 9VAC20-90-115. Also removes language referring to fees deferred in the past. Necessary to reorganize and clarify annual fee requirements.
B 2.	N/A.	Provides information concerning payment of 2004 fees.	Deleted. Action completed in the past. Necessary to reorganize and clarify annual fee requirements.
B 3.	B 2.	Provides for Optional payment by quarter.	Renumbered. Necessary to reorganize and clarify annual fee requirements.
B 4.	B 3.	Provides information about late payments.	Renumbered. Necessary to reorganize and clarify annual fee requirements.

C.	N/A.	Specifies allowed methods of payment.	Removes transmittal letter requirement and updates address information. Necessary to simplify and clarify annual fee requirements.
N/A.	90-114.	N/A.	Provides a new method and rules for calculating annual fees from construction and demolition debris (CDD) landfills and noncaptive industrial (NCI) landfills. The new formula calculates the fee from the two-part fee values in table 4.1 and a factor to compensate for cost increases using the Consumer Price Index (CPI). Necessary to revise the calculation method for these fees for these facilities to be more similar to the method of calculating sanitary landfill fees.
N/A.	A.	N/A.	Provides that CDD and noncaptive industrial landfills must submit annual fees as calculated in subsection B and rounded to the nearest dollar. Necessary to revise the calculation method for these fees for these facilities to be more similar to the method of calculating sanitary landfill fees.
N/A.	B.	N/A.	Provides a formula, procedure, and examples for determining the annual fees for CDD and NCI landfills based upon the two-part base fee and fee per ton of material landfilled previously only used by sanitary landfills and an annual fee increase factor to compensate for increases in the Consumer Price Index (CPI). This formula does not include the direct cost adjustment factor applied to the calculation in section 115. Necessary to revise the calculation method for these fees for these facilities to be more similar to the method of calculating sanitary landfill fees.
N/A.	C.	N/A.	Carries provisions for determining tonnage and material record requirements into new section 114 that were previously applicable to CDD and NCI landfills under section 115. Necessary to provide fee calculation continuity for CDD and NCI landfills.
N/A.	D.	N/A.	Carries emergency provisions into new section 114 that were previously applicable to CDD and NCI landfills under section 115. Necessary to provide fee continuity for CDD and NCI landfills.
N/A.	E.	N/A.	Carries environmental excellence provisions into new section 114 that were previously applicable to CDD and NCI landfills under section 115. Necessary to provide fee continuity for CDD and NCI landfills.

N/A.	F.	N/A.	Carries fee carry-through provisions into new section 114 that were previously applicable to CDD and NCI landfills under section 115. Necessary to provide fee continuity for CDD and NCI landfills.
N/A.	G.	N/A.	Carries fee provisions for facilities in closure into new section 114 that were previously applicable to CDD and NCI landfills under section 115. Necessary to provide fee continuity for CDD and NCI landfills.
N/A.	H.	N/A.	Carries post-closure fee provisions into new section 114 that were previously applicable to CDD and NCI landfills under section 115. Necessary to provide fee calculation continuity for CDD and NCI landfills.
N/A.	I.	N/A.	Provides a regulatory limit on total nonhazardous solid waste permit fees collected for CDD and NCI landfills. Necessary to incorporate the limit required in HB 30 language.
90-115.	N/A.	Provides the method and rules for calculating annual fees for all facilities subject to annual fees .	Limits the applicability of rules, a new formula and method for calculating annual fees in this section to facilities other than CDD landfills and NCI landfills. Necessary to revise the calculation method for these fees to be applicable only to those facilities that are not CDD and NCI landfills.
A.	N/A.	Requires that operators of all applicable facilities submit annual fees.	Limits the section to be applicable to only facilities other than CDD or NCI landfills. Adds a requirement to calculate fees instead of taking fees directly from fee table 4.1. Removes language concerning method of calculation to new subdivisions B 1 and B 2. Also requires that fee amounts be rounded to the nearest whole dollar. Necessary to allow annual adjustments to annual fee amounts.
B.	N/A.	Specifies how annual fee is to be calculated from annual fee table in 9VAC20-90-130.	Renumbers, reorganizes, and adds formulae for: (1) a direct cost adjustment factor and (2) an annual fee increase to compensate for increases in the Consumer Price Index (CPI). Includes the calculation information removed from subsection A. Modifies examples, and adds examples for the CPI calculation and an example calculating the annual fee. Necessary to recover funds removed from the general fund budget.
H.	N/A.	Provides fee rules for all facilities in post closure care.	Updates the subsection with a necessary internal reference. Necessary to follow rules for regulatory style.
N/A.	I.	N/A.	Provides a regulatory limit on total nonhazardous solid waste permit fees collected. Necessary to incorporate the limit required in

			HB 30 language.
90-130	N/A.	Annual fee schedules.	Changes the fee table to revise the table title and headers and to reformat the table. Necessary to reorganize and clarify annual fee requirements.
Table 4.1, section 1.	N/A.	Provides a flat fee rate for noncaptive industrial (NCI) landfills.	Deleted. Necessary to revise the calculation method for these fees for NCI landfills to be more similar to the method of calculating sanitary landfill fees.
Table 4.1, section 2.	N/A.	Provides a flat fee rate for construction and demolition debris (CDD) landfills.	Deleted. Necessary to revise the calculation method for these fees for CDD landfills to be more similar to the method of calculating sanitary landfill fees.
Table 4.1, section 3 through 5.	N/A.	Provides a two-part fee rate for sanitary landfills.	Renumbered and revised to include CDD and NCI landfills. Necessary to revise the calculation method for these fees for CDD landfills to be more similar to the method of calculating sanitary landfill fees.
Table 4.1, sections 4 and 5.	N/A.	Provides fee rates for incinerators and other categories of solid waste disposal facilities.	Renumbered. Necessary to revise the calculation method for these fees for CDD landfills to be more similar to the method of calculating sanitary landfill fees.

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: (1) the establishment of less stringent compliance or reporting requirements; (2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; (3) the consolidation or simplification of compliance or reporting requirements; (4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and (5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

An analysis of the proposal was completed for alternative regulatory methods that will minimize the adverse impact on small businesses without compromising health, safety, environmental and economic welfare.

1. Lesser annual fee amounts will fail to recover sufficient funds to support the nonhazardous solid waste permit programs and will compromise the administration, compliance and enforcement of those permit programs. Increasing application fees for nonhazardous solid waste permits is not a sufficiently reliable source of funds to guarantee that the annual budgetary shortfall will be recovered. Failure to provide annual fee increases based on rising costs will increase the shortfall every year and gradually undermine the effectiveness of those permit programs. Compromised funding of nonhazardous solid waste permit programs will compromise public health, safety, environmental and economic welfare.

2. Delay in implementing the fee increases until 2011 will result in a budgetary shortfall for the 2010 fee collection year (2011 fiscal year), and will compromise the administration, compliance and enforcement of nonhazardous solid waste permit programs and will compromise public health, safety, environmental and economic welfare.
3. Consolidation of any compliance or reporting requirements that will delay submission of annual fees will compromise public health, safety, environmental, and economic welfare.
4. There are no performance standards, operational standards or design standards associated with nonhazardous solid waste permit program annual fees.
5. Since small businesses make up the majority of facilities subject to the annual fee increases, exemption of small businesses as a class from annual fee increases will compromise public health, safety, environmental, and economic welfare.

### Family impact

*Assess the impact of this regulatory action on the institution of the family and family stability.*

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It is not anticipated that these regulation amendments will have a direct impact on families. However, fee increases will probably be passed along to families in the form of small increases in garbage collection bills, landfill fees, or other product and service costs. There will be positive indirect impacts in that the regulation amendments will ensure that the Commonwealth's nonhazardous solid waste permit programs will be funded as intended by the General Assembly and will function as effectively as possible, thus contributing to reductions in related public health and welfare problems.

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